IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4257 OF 2005

Shri. Zakhir Alisaheb Athnikar ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. H.S.Venegavkar for the Applicant.
Ms M.M. Deshmukh, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 21, 2005.

P.C.:

1. This is an Application for Anticipatory Bail. A complaint was filed against the Applicant alleging the commission of offences under sections 406 and 420 of the Indian Penal Code. The allegation of the complainant is that the Applicant had purchased from the complainant various grocery items such as 'atta' etc. The case of the complainant is that grocery items worth Rs.2,49,667/- were purchased by the Applicant from the complainant under regular bills and he declined to pay the price of the goods. Therefore, a notice was issued on 30th April, 2005 by the complainant calling upon the Applicant to pay the amount. However, no reply was sent to the said notice. On the complaint filed by the complainant, learned Magistrate passed an order on 07th May, 2005 directing the Investigation under section 156(3) of the Code of Criminal Procedure, 1973. Accordingly, the concerned Police Station registered an offence vide M.C.R. No. 10 of 2005.

2. The learned Sessions Judge rejected the application filed by the Applicant for Anticipatory

Bail on the ground that the Applicant made a false statement before the court and the Applicant gave false reply to the notice issued by the complainant. The learned Judge also observed that the Applicant has putforth false case and has tried to misguide the court. From the order it is not clear that in what manner the court was misguided or the nature of the false statement allegedly made by the Applicant.

3. On 7th July, 2005 and 14th July, 2005 hearing of this Application was adjourned as the concerned Investigating Officer was not present. Today, the learned A.P.P. on instructions of the concerned Investigating Officer has stated that in fact no reply was sent by the Applicant to the notice dated 30th April, 2005 issued by the original complainant. The learned A.P.P. is unable to point out in what manner false statement was made by the Applicant before the learned Additional Sessions Judge and in what manner the Applicant tried to misguide the Court of the learned Additional Sessions Judge. If reply is not sent by the Applicant is is very difficult to understand as to how the learned Judge observed that the reply was false. It is therefore, obvious that the reasons given by the learned Additional Sessions Judge for rejecting the Application made by the Applicant cannot be justified.

4. On plain reading of the complaint filed by the original complainant, the dispute between the parties essentially appears to be of a civil nature. Even assuming that some offence is made out, this is not a case where custodial interrogation of the Applicant is required. Hence, Applicant is entitled to relief of Anticipatory Bail.

5. I have perused the affidavit dated 15th July, 2005 filed by the Investigating Officer explaining the reasons for his absence on earlier two dates. The explanation given by the Investigating Officer in paragraph Nos.2 to 4 deserves to be accepted and hence, no further action is called for against the Investigating Officer.

6. Hence, I pass the following order:

: O R D E R :

i) In the event of the arrest of the Applicant in connection with M.C.R.No.10 of 2005 of Laxmipuri Police Station, District Kolhapur, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs. 10,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will remain present in the concerned

Police Station as and when called upon to do so by the Investigating Officer and will co-operate for investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investiating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE